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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/797,910	03/09/2004	Kenneth J. Michlitsch	USGINZ00600	3380
40518	7590	03/13/2008	EXAMINER	
LEVINE BAGADE HAN LLP 2483 EAST BAYSHORE ROAD, SUITE 100 PALO ALTO, CA 94303			VRETTAKOS, PETER J	
ART UNIT	PAPER NUMBER			
			3739	
MAIL DATE	DELIVERY MODE			
03/13/2008			PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/797,910	<b>Applicant(s)</b> MICHLITSCH ET AL.
	<b>Examiner</b> PETER J. VRETTAKOS	<b>Art Unit</b> 3739

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

1) Responsive to communication(s) filed on 01 February 2008.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

4) Claim(s) 8,10-12 and 32-34 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 8,10-12 and 32-34 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/96/08)  
Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_

5) Notice of Informal Patent Application

6) Other: \_\_\_\_\_

**DETAILED ACTION**

RCE filed 2-1-08.

The application is published application number: 2005/0203488. The publication is classified in US 606/1.

The Applicant is requested to provide (or check for accuracy) at the beginning of the Specification updated status information (serial numbers and patent numbers) of all related applications. The effective filing date of this application 3-9-04.

Pending claims are 8, 10-12 and 32-34.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8, 10-12 and 32-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Edwards et al. (6,258,087).

Note: specific references in the patented disclosure below are not limiting to those excerpts. (The Office reserves the right in future actions to apply other excerpts, need be, from the patent.)

The patent discloses:

8. Apparatus (24) for mapping out endoluminal gastrointestinal surgery, the apparatus comprising: an endoluminal support with shaft (30) configured for endoluminal placement within a gastrointestinal lumen; a suction port (102) inherently with an inner tube and the endoluminal support; and a radiofrequency element (36; col. 10:11-5) inherently with a conductor connected to an RF generator (38).

10. The apparatus of claim 8, wherein the suction port (102) is disposed on the endoluminal support (30).

11. The apparatus of claim 8, wherein the radiofrequency element comprises at least one electrode (66), the at least one electrode disposed on a surface of the endoluminal support and coupleable to a radiofrequency generator (38).

12. The apparatus of claim 8, further comprising an inflation element (72) configured to approximate an interior of the gastrointestinal lumen and the endoluminal support.

Re. claims 32-34: Edwards inherently discloses a suction pump (attached to suction port 102), a lumen (attached to port 102) and a handle (see figure 5) with pull wires attached to a push pull mechanism (68).

Note: case law addresses obviousness (hence the instant obviousness rejection) when the prior art discloses one of a certain element (102) and the Applicant discloses a plurality of the same element. Taken from MPEP § 2144.04.

*In re Harza*, 274 F.2d 669, 124 USPQ 378 (CCPA 1960) (Claims at issue were directed to a water-tight masonry structure wherein a water seal of flexible material fills the joints which form between adjacent pours of concrete. The claimed water seal has a "web" which lies in the joint, and a plurality of "ribs" projecting outwardly from each side of the web into one of the adjacent concrete slabs. The prior art disclosed a flexible water stop for preventing passage of water between masses of concrete in the shape of a plus sign (+). Although the reference did not disclose a plurality of ribs, the court held that mere duplication of parts has no patentable significance unless a new and unexpected result is produced.).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter J. Vrettakos whose telephone number is 571-272-4775. The examiner can normally be reached on M-F 9-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C. Dvorak can be reached on 571-272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Pete Vrettakos/

March 13, 2008

/Roy D. Gibson/  
Primary Examiner  
Art Unit 3739